BAIL BONDS:
RULES OF CRIMINAL PROCEDURE:
MAGISTRATES:

1. A bail bond need not be presented at the police station nor is it a requirement that the bonded person be taken before the magistrate. 2. The defendant is entitled to release upon approval of the bond. 3. Supreme Court Rule 21.14 requires only one bond. 4. An appearance bond that is issued prior to the actual arrest of the defendant is null and void for the reason that the magistrate is without authority or jurisdiction to require or to fix the defendant's bail.

August 18, 1959

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Honorable Norman H. Anderson
Prosecuting Attorney
St. Louis County
Courthouse
Clayton, Missouri

Dear Mr. Anderson:

This is in response to your request for an opinion of May 27, 1959, which we quote:

> "I have been requested to obtain an opinion relative to Supreme Court Rule No. 21-14, and other statutes and laws relative thereto, from your office by various law enforcement agencies in St. Louis County.
>
> "The Magistrates in St. Louis County have been issuing 'Appearance Bonds' based upon Supreme Court Rule No. 21.14.
>
> "The following questions have been raised:
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> (1) Can the Police carry out 'routine' duties such as fingerprinting and photographing a person after they have received an Appearance Bond?
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> (2) On an Appearance Bond should the bond be presented at the Police Station or should the defendant be taken before the Magistrate issuing the bond?
>
> (3) If a defendant is picked up for investigation on two or more separate crimes, is one bond sufficient for the defendant's release? (Please bear in mind that the bond would read . . . 'to answer any charge preferred. . .')

(4) What is the legal significance of an Appearance Bond that is issued and directed to the Police involved, prior to the actual arrest of the defendant, relative to an investigation for a crime? (This has occurred on occasion when an attorney procures an Appearance Bond for a defendant and then has the defendant surrender himself to the Police. The Police, in this situation, have an Appearance Bond or an order of authority to release the defendant before they actually arrest the defendant.)

"I am enclosing a typical release that is given to the Police as authority to release defendants from custody for the reason that a bond has been signed. I wonder if this is proper procedure and would appreciate any help you might give us in this situation."

Rule 21.14, Rules of Criminal Procedure for the Courts of Missouri, amended April 15, 1958, effective December 1, 1958:

"All persons arrested and held in custody by any peace officer, without warrant, for the alleged commission of a criminal offense, or on suspicion thereof, shall be discharged from such custody within twenty hours from the time of arrest, unless they be held upon a warrant issued subsequent to such arrest. While so held in custody, every such person shall be permitted to consult with counsel or other persons in his behalf. If the offense for which such person is held in custody is bailable and the person held so requests, he shall be entitled to be admitted to bail in an amount deemed sufficient by a judge or magistrate of a court of such county or of the City of St. Louis having original jurisdiction to try criminal offenses. Such admission to bail shall be governed by all applicable provisions of these Rules. The condition of the bail bond shall be that the person so admitted to bail will appear at a time and place

> stipulated therein (which shall be a court having appropriate jurisdiction) and from time to time as required by the court in which such bond is returnable, to answer to a complaint, indictment or information charging such offense as may be preferred against him."

We choose to first discuss your second question. Rule 21.14, supra, states that the person to whom Rule 21.14 applies shall be entitled to be admitted to bail in an amount determined sufficient by a judge or magistrate of a court of such county or of the City of St. Louis having original jurisdiction to try criminal offenses. It is to be observed that this does not specifically require that the person appear before the judge. We call your attention to the case of State v. Wilson, 175 S.W. 603. The Supreme Court of Missouri in this case discusses the distinction between a recognizance and a bail bond. The court, in paragraph 7, states in part:

> "A bail bond is an obligation required under the common law to be under seal, but not so here, where seals have been abolished. It must be signed by the party giving the same, with one or more sureties, under a penalty, conditioned to do some particular thing, usually, as in recognizances, to appear to answer some charge. Its execution, approval, and delivery effect the creation of a contract or debt not of record and give it its binding effect. It may be taken in court or out of court in vacation. An acknowledgment does not add to its effectiveness, and there is nothing in its nature or terms which requires that it should be signed in the presence of the court or officer who takes same to render it valid. * * *"

In paragraph 9 the court states:

> "* * * The instrument being in the nature of a bail bond and not a recognizance, the indorsements thereon show that after it was taken and approved by the probate judge it was filed in the office of the circuit clerk, where the criminal case against the principal was pending. Being in other respects in compliance with the law, this was all that

was necessary to render it effective and binding upon the parties thereto."

We think that the law does not require that the bond be presented at either the police station nor that the defendant be taken before the magistrate issuing the bond. It is apparent from the cited case that the bond need only be properly executed and approved by the judge. This would be sufficient to render the bond effective and binding upon the parties thereto. A previous opinion of this office to Robert Lamar, Cabool, Missouri, on September 8, 1955, is not inconsistent with this position. It was the conclusion of that opinion that one arrested without a warrant may not be admitted to bail except by the judge or magistrate under the provisions of Rule 21.14, supra. However, this opinion does not state that it is necessary that the bonded person appear before that judge or magistrate to get his bond. We enclose a copy of that opinion. We also wish to bring to your attention the case of Ewing v. United States, 240 Federal Reporter 241, Circuit Court of Appeals, Sixth Circuit.

It is our belief that the answer to the above question necessarily carries with it the answer to your first question. Since there is no requirement that the bail bond be presented at the police station, it would appear that a person is entitled to his release when a properly executed bail bond has been approved.

With respect to your third question, it is our opinion that Rule 21.14, supra, authorizes the issuance of one bond, the condition of which shall be that the person so admitted to bail will appear at a time and place stipulated therein (which shall be a court having appropriate jurisdiction) and from time to time as required by the court in which such bond is returnable, to answer to a complaint, indictment or information charging such offense as may be preferred against him. The assurance of his appearance to answer such charges that may be preferred against him is the purpose of the bond. It would be unreasonable to assume that he should be required to provide a separate bond for each charge which the police might make against him prior to his appearance in the court having appropriate jurisdiction. Therefore, under Rule 21.14, supra, we feel that one bond is sufficient for the defendant's release.

In answer to your fourth question, from the facts which you have given us, it would appear that unless the defendant has been arrested no court would have appropriate jurisdiction permitting it to approve or sanction an appearance bond. We bring your attention to State v. Fleming, 227 S.W. 2d 106, Kansas City

Court of Appeals, February 6, 1950. In this case the court considers the situation in which the defendant had been in custody three days after his arrest, awaiting the filing of a complaint and thereafter for fifteen days without any proper warrant based on the complaint filed. The court held that without lawful custody of the defendant at the time the recognizance was executed the magistrate was without authority or jurisdiction to require or to fix his bail or to receive the recognizance, which was therefore null and void. It is our belief that the law set forth in this case is pertinent to the problem which you present. It is our opinion that an appearance bond that is issued and directed to the police involved prior to the actual arrest of the defendant is null and void.

It would seem that the manner in which the police are notified of the effectiveness of a bond should be a matter for local procedure. It should be noted from the above that it is not required that the bond itself be presented at the police station. It would seem that any reasonable procedure, consistent with the rights of the defendant, for notifying the police to release said defendant would be appropriate.

## CONCLUSION

It is the opinion of this office that:

1. A bail bond issued pursuant to Supreme Court Rule 21.14, Rules of Criminal Procedure for the Courts of Missouri, amended April 15, 1958, effective December 1, 1958, need not be presented at the police station, nor is it a requirement that the bonded person be taken before the magistrate issuing the bond.

2. The defendant for whom the bail bond has been executed pursuant to Rule 21.14, supra, is entitled to release when the properly executed bond has been approved.

3. It is only necessary that one bond be provided, as set forth above, pursuant to Rule 21.14, supra.

4. An appearance bond that is issued prior to the actual arrest of the defendant is null and void for the reason that the magistrate is without authority or jurisdiction to require or to fix the defendant's bail.

5. Methods of notification to the police that a bail bond

Honorable Norman H. Anderson

has been properly executed are a matter for local procedure.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON
Attorney General

JBS:mc
Enclosures